

In Memoriam: **Howard J. Taubenfeld (1924–1996)**

Howard Taubenfeld died suddenly early Sunday morning, February 25, 1996. The preceding week had been a full week: he had taught his first-year property class and his upper-level international organizations law class as usual, had met with students and colleagues, had entertained the student Jessup competition team, and had spent time with family and friends. At dinner the Wednesday before his death, his conversation sparkled with anecdotes about his experiences as a student at Columbia Law School after World War II. Although a faculty member at the SMU School of Law since 1961, Howard showed no signs of slowing up.

Howard's interests, like his conversations, ranged broadly. He made his academic reputation with his 1959 study of *Controls for Outer Space*, which he co-authored with Philip Jessup. Later publications studied weather modification, race and law in South Africa, and the status of women in international law. He taught not only the more traditional courses in public international law, family law, and property, but also innovative seminars exploring how law relates to ethical issues and to changing technology. An avid reader of newspapers, he reveled in assimilating current events with his class presentations.

During the last decade of his life, Howard and his wife, Rita Falk Taubenfeld, undertook a study of democracy and multiethnic societies. One product of this study is a thoughtful essay, "Some Thoughts on the Problems of Designing Stable Democracies," published in the *International Lawyer's* 1990 collection of essays in Tribute to Louis B. Sohn. This essay and several book reviews are his visible contributions to the *International Lawyer*. What cannot be found in its pages, however, are Howard's generous responses to requests for advice—a service often overlooked until one can no longer call upon it.

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Excerpts from *Some Thoughts on the Problems of Designing Stable Democracies*, 29 INT'L LAW. 689, 709-10 (1990):

The lessons of constitutional experience can be useful, and we are exploring them in detail elsewhere. But, as noted, no one institutional formula has assured success historically. The most important question then, for any emerging democracy with diverse constituencies is: Are the citizens and their leaders ready to undertake the mutual commitment to make whatever constitution they negotiate work democratically? There are no constitutional gimmicks that will cure the problem. The appropriate immediate action issue is not what specific mechanism or exact wording they should adopt at a constitutional convention, but rather what can they do to learn to work together to prepare themselves for workable democracy.

We have found constitutional promises surprisingly similar, yet whether or not a people's goals, their reach, should "exceed their grasp," it is true that few countries can claim to fully live up to the glorious general aspirations expressed in their constitutions. Indeed, in principle, since constitutional provisions are likely to imply competing claims on limited national opportunities and resources, not all potentially legitimate claims or claimants could be satisfied.

Whatever the constitution, the economic problem remains. Resources and opportunities are limited. Not everybody who wants to lead the band or to be president can be satisfied. Furthermore, quite likely, many potentially highly qualified competitors exist simultaneously. Most must acquiesce in not being chosen. In a broadly based democracy they, the unchosen, will have to get something, too. Thus the stress on the importance of sharing and shared commitment to democracy.

Ideas have power; constitutional ideas sanctified as the principal political compact between a people and their government are very important in the ideological life of that community. Although perfect democracy is in principle undefinable and unattainable, citizens prove willing to support ongoing approximations to good democratic government if the process seems adequately fair.

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If constitutional promises are important, they are obviously not enough. If we were forced to produce an operational guideline for leaders seeking to maintain stable, broadly consensual democracies, on either the British or the U.S. model, the first three rules would probably be: "co-opt, co-opt, co-opt," the politically operational meaning of broad sharing in open democracy. This review of current constitutions reminds us again that no one formula assures success. The most essential constitutional building block for the creation of stable democracy remains a common commitment to sharing and a firm intention to make stable democracy work.